**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 383 OF 2004**

Syed Mohed Mosood ...Petitioner

Versus

Twinkle Apartment C.H.S. Ltd. & Anr...Respondents

.....

Smt. S.D. Gandhi, counsel for Petitioner

.....

**CORAM: B. H. MARLAPALLE, J.**

**DATED: 15TH FEBRUARY, 2005**

**P. C.:-**

1. Heard Smt. Gandhi, the learned counsel for the petitioner who is the disputant before the 4th Co-operative Court at Mumbai in case No. CC/IV/65 of 1999. It is contended that ad-interim restraining order was passed in the said dispute against the opponents on 11.2.99 and the said order was made absolute by further order dated 11.10.2000 and the application moved by the Honorary Secretary of the opponent No.1 Society came to be rejected. It is further contended that from January to August,2004 the petitioner was in Chennai and when he returned in September, 2004 he noticed that the suit shop was in possession of Opponent No.2 who is his mother. It is therefore, alleged that the original opponents and the present respondents have acted in breach of the

restraining order passed by the Co-operative Court and thus committed the contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971.

2. Admittedly, the present petitioner has filed interim Notice No. 37 of 2004 in the pending case before the Co-operative Court seeking restoration of the suit shop and in reply filed by the society in the said notice, it is stated that the petitioner was never in possession of the suit shop and therefore, the question of restoration of the shop in his favour does not arise. This reply specifically states that there has not been any breach of the injunction order passed by the Co-operative Court.

3. While passing the order dated 11.10.2000 the Co-operative Court had noted that the suit shop was purchased by an agreement dated 18.5.90 and the said agreement was executed between M/s. Bhagat and Kapoor Housing Development Pvt. Ltd. and Mrs. Rafium Jamdar and Mr. Syed Jamdar who was the father of the present petitioner and it appears that on his demise the petitioner claims share in the suit shop alongwith his mother. The mother did not appear before the Co-operative Court inspite of the notices and therefore, while rejecting the application filed by the Society, the Co-operative Court held that there was prima facie case in favour of the

disputant. It is obvious that the petitioner's claim over the suit shop, through the share of his father is governed by the Personal Law as applicable to him and it would not be a dispute between the society and his mother on one part and the petitioner on the other side. His right does not exist as at present and unless the same is crystalised by a decision of the competent authority, he cannot enforce the possession of the suit shop from his mother to himself. The society claims that the possession of the suit shop was with his mother at all times and therefore, on the face of this averments made by the respective parties before the Co-operative Court it cannot be held that the petitioner has been dispossessed and the restraining order has been breached by the opponents i.e. the Co-operative Society and the mother of the petitioner. In fact the petitioner also had a remedy of approaching the Co-operative Court by filing an application under order XXXIX Rule 2-A of C.P.C. if he was convinced that the order of injunction was not followed.

4. Hence, the contempt petition fails and the same is hereby rejected.